

- Group V: Claims 23 and 29, drawn to a process for producing L-amino acids using a bacterial cell comprising an attenuated lysRl gene and one gene whose expression is enhanced, wherein said gene is selected from the group consisting of dapA, eno, zwf, pyc, and lysE;
- Group VI: Claims 23 and 30, drawn to a process for producing L-amino acids using a bacterial cell comprising an attenuated lysRl gene and one gene whose expression is attenuated, wherein said gene is selected from the group consisting of pck, pgi, and poxB;
- Group VII: Claims 31 and 32, drawn to a process for screening for polynucleotides which encode a protein having LysRl transcriptional regulatory activity by hybridizing a polynucleotide;
- Group VIII: Claims 33 and 35, drawn to a method for detecting a nucleic acid by hybridizing a probe or primer to a nucleic acid sample;
- Group IX: Claims 34 and 36, drawn to method for producing nucleic acid which is at least 70% homologous to SEQ ID NO: 1; and
- Group X: Claim 39, drawn to an isolated polypeptide comprising the amino acid sequence of SEQ ID NO: 2.

In addition, the Office is requiring an election of a single disclosed species as follows:

If Group V (Claims 23 and 29) is elected, one of dapA, eno, zwf, pyc, and lysE.

If Group VI (Claims 23 and 30) is elected, one of pck, pgi, and poxB.

Applicants elect, with traverse, Group I, Claims 1-19, 37, and 38, for further prosecution. Applicants note that an election of Species is not required with the election of Group I.

Applicants note that claims of Groups VII-IX are directly dependent from the claims of Group I, as such these groups are not separable.

Applicants further note that the *Coryneform* bacteria of Group II is a component of the methods of Groups IV-VI, and therefore Restriction between these Groups is improper.

Citing MPEP §806.04 and MPEP §808.01, the Office has characterized the inventions of Groups I-III and X as unrelated. According to MPEP 808.01, if inventions are held unrelated, it must be shown that they are not disclosed as capable of use together. However, the Office has merely stated its conclusion without providing sufficient reasons or examples. Thus, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement and it should be withdrawn.

Citing MPEP §806.04 and MPEP §808.01, the Office has characterized the inventions of Groups IV-IX as unrelated. Applicants disagree. Applicants note that the methods of Groups IV-VI depend from Claim 23. In addition, Groups IV-VI include Claim 23, and therefore, should not be separated. Furthermore, the Office has not provided sufficient reasons and/or examples to support this assertion. The Office has merely stated the conclusion. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement and it should be withdrawn.

Citing MPEP §806.04 and MPEP §808.01, the Office has characterized the inventions of Groups II, III, and X as unrelated to Group IV-IX. Applicants disagree. Applicants note that the methods of Groups IV-VI depend from Claim 23. In addition, Groups IV-VI include Claim 23, and therefore, should not be separated. Applicants further note that the *Coryneform* bacteria of Group II is a component of the methods of Groups IV-VI, and therefore Restriction between these Groups is improper. Applicants note that claims of Groups VII-IX are directly dependent from the claims of Group I, as such Groups VII-IX are not separable. Furthermore, the Office merely stated the conclusion without providing sufficient reasons why the groups are unrelated. Accordingly, the Office has failed to meet

the burden necessary in order to sustain the Restriction Requirement and it should be withdrawn.

In regard to Groups I and IV-IX, the Office has characterized the relationship between these two groups as product and process of use. Citing MPEP §806.05(h), the Office suggests that the claimed composition can be used in a materially different process such as a process of “using the polynucleotide in a recombinant process for producing a recombinant polypeptide.” However, the processes of Groups VII-IX are directly dependent from the claims of Group I, and as such can not be separated. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all claims would not constitute a serious burden on the Office, particularly in view of the fact that Groups IV-VI and Groups VII-IX are classified in the same subclasses (class 435, subclass 115 and class 435, subclass 6, respectively).

Additionally, MPEP §821.04 states:

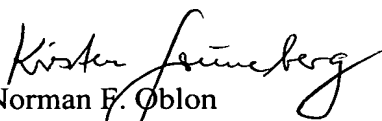
...if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Thus, should the elected group be found allowable, the corresponding non-elected process Claims 31-36 (Groups VII-IX) should be rejoined.

For the reasons set forth above, Applicants contend that the Restriction Requirement is improper and should be withdrawn.

Applicants further submit that this application is now in condition for examination on the merits and an early notification to that effect is earnestly solicited.

Respectfully submitted,  
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